

Edward A. Rose, Jr., Esq. (CA State Bar No. 177878)  
Two Arena Place  
7324 Southwest Freeway Suite 608  
Houston, Texas 77074  
Telephone (713) 581-6029  
Facsimile (832) 201-9960  
[edrose@edroseattorneycpa.com](mailto:edrose@edroseattorneycpa.com)

**FILED**  
Superior Court of California  
County of Los Angeles

**FILED**  
NORTH COUNTY DIVISION  
2013 SEP 30 PH 3:10

DEC 30 2013  
Sherri R. Carter, Executive Officer/Clerk  
By Rachel Duran Deputy

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

Attorney for Plaintiff F K B INCORPORATED, a California Corporation dba MOUNTAIN'S PEAK WATER

D-69- William F. FAHEY

SUPERIOR COURT OF STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

BC531805

F K B INCORPORATED, a California Corporation )  
dba MOUNTAIN'S PEAK WATER )

Case No.:

37-2013-00069349-CU-BC-NC

IMAGED FILE

**IMAGED**

Plaintiff,

vs.

GW SERVICES, LLC dba GLACIER WATER  
SERVICES, and DOES 1 through 20 inclusive.

Defendants.

VERIFIED COMPLAINT FOR:

- (1) BREACH OF SETTLEMENT AGREEMENT;
- (2) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS;
- (3) TRADE LIBEL (DISPARAGEMENT)
- (4) UNFAIR COMPETITION (B&P 17070 et. seq);
- (5) TEMPORARY AND PERMANENT INJUNCTIVE RELIEF (B&P 17070 et. seq);
- (6) PUNITIVE DAMAGES

JURY TRIAL REQUESTED FOR ALL  
ISSUES TRIABLE BY JURY

Plaintiff, F K B INCORPORATED, a California Corporation dba MOUNTAIN'S PEAK WATER for  
its complaint against defendant, GW SERVICES, LLC dba GLACIER WATER SERVICES, and  
DOES 1 through 20, and alleges as follows:

ENTERED ON LINE

DEC 30 2013

Transfer Desk

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COMPLAINT

CIT/CASE: BC531805  
LEA/DEF#:   
RECEIPT #: CCH465960023  
DATE PAID: 12/30/13 11:01 AM  
PAYMENT: \$435.00  
RECEIVED: 310  
CHECK: \$435.00  
CHARGE: \$0.00  
CHARGE: \$0.00  
CHARGE: \$0.00

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**INTRODUCTION AND NATURE OF THE DISPUTE**

1. The parties to this action both own and operate competing self-service water vending machines in the Greater Los Angeles area including the adjoining counties. The parties place these self-service water vending machines in various businesses throughout the area after obtaining and signing a "Water Vending Machine Commission Agreement" with the business owner. These Vending Machine Commission Agreements are usually for a period of 3-5 years, with the business owner having the option to renew the agreement at or near the end of its term. Thus, problems may occur if there is a change in ownership at the business – unless the contract is placed into escrow the agreement becomes null and void to the new owner. When this occurs, there is a race to sign a new contract with the new location owner.
2. In or about November 20, 2012, defendant Glacier filed a complaint against plaintiff Mountain's Peak in the Superior Court of the State of California, County of Los Angeles, Central District, entitled *GW Services, LLC dba Glacier Water Services v. Mountain's Peak Water, et al.*, Case No. BC496020. Glacier alleged that Mountain's Peak was intentionally interfering with its contractual relations with its customers, intentionally interfering with prospective economic advantage, and partaking in unfair competition. Glacier alleged that Mountain's Peak removed Glacier's vending machines at the customer locations and replaced them with their own machines, used the name "Glacier's Peak" and signed contracts with their current customers.
3. Mountain's Peak drafted a cross-complaint against Glacier, alleging that Glacier intentionally interfered with its contractual relations with its customers, intentionally interfered with its prospective economic advantage, engaged in trade libel, and engaged in unfair competition. Mountain's Peak alleged that Glacier went to its customers and deceived, threatened, and pressured them into signing new contracts with Glacier instead of Mountain's Peak, made false representations to Mountain's Peak's customers about the product of Mountain's Peak in order to gain the customers' business, and offered Mountain's Peak's customers "sign on bonuses" to sign contracts with Glacier and discontinue their contract with Mountain's Peak. However, before this cross-complaint was filed by Mountain's Peak, the parties settled their disputes.

- 1 4. In or about April 10, 2013, Glacier and Mountain's Peak entered into and executed a  
2 "Settlement Agreement and Mutual General Release" (hereinafter referred to as  
3 "SETTLEMENT AGREEMENT"). A true and correct copy of this Settlement Agreement  
4 is attached as Exhibit A and incorporated by reference as though fully pled herein  
5 Prospectively, the Settlement Agreement relates to the placement and maintenance of  
6 certain water dispensing machines located in various contested store/market locations and  
7 provides a protocol for dispute resolution pertaining to disputed locations after the signing  
8 of the Agreement.
- 9 5. Glacier and Mountain's Peak specifically enumerated in Section 5(a) of the Settlement  
10 Agreement which party had the rightful contractual status to 19 locations in additional to  
11 other considerations.
- 12 6. In Section 5(c) of the Settlement Agreement, both Glacier and Mountain's Peak agreed to  
13 provide notice to each other when entering into a new agreement with the other party's  
14 vendor that commenced after the current contract expiration date of the existing contract or  
15 if there is a change of ownership before the end of the current contract. Once this notice is  
16 received, the other party is required to remove its machine and equipment within 10  
17 business days from the location. The parties also agreed not to remove the other's  
18 equipment, tamper, or harm the equipment in any way. However, since the executed  
19 Settlement Agreement, Glacier has repeatedly and egregiously breached these terms by not  
20 removing their machines within the 10 business days. This has caused Mountain's Peak to  
21 be damaged to the extent of lost net profits for each day that Glacier has not removed their  
22 machine. Additionally, Glacier has continually and intentionally interfered with Mountain's  
23 Peak's existing contracts with its location owners in addition to disparaging Mountain's  
24 Peak in an attempt to induce location owners to breach their contract with Mountain's Peak.

#### PARTIES

- 25 7. Plaintiff F K B INCORPORATED, a California Corporation dba MOUNTAIN'S PEAK  
26 WATER (hereinafter referred to as "MOUNTAIN'S PEAK") is an owner and operator of  
27 self-service water vending machines throughout California, including the county of Los  
28 Angeles, with its principal place of business in Valencia, Los Angeles County, California.

- 1 8. Defendant GW SERVICES, LLC d/b/a GLACIER WATER SERVICES (hereinafter  
2 referred to as "GLACIER") is a limited liability company duly formed and existing under  
3 the laws of the state of California, with its principal place of business located in Vista, San  
4 Diego County, California. Glacier is an owner and operator of self-service water vending  
5 machines throughout North America, including the county of Los Angeles.
- 6 9. Defendants Does 1 through 20, inclusive, are sued herein under fictitious names. Their true  
7 names and capacities are unknown to plaintiff. When their true names and capacities are  
8 ascertained, plaintiff will amend this complaint by inserting their true names and capacities  
9 herein. Plaintiff is informed and believes and thereon alleges that each of the fictitiously  
10 named defendants is responsible in some manner for the occurrences herein alleged, and  
11 thereby proximately caused injuries and damages to the plaintiff as herein alleged. Plaintiff  
12 is informed and believes and thereon alleges that at all times herein mentioned, Defendant  
13 and Doe 1 through 20 were agents, servants, and employees of their Defendant, and in  
14 doing the things hereinafter alleged were acting in the scope of their authority as agents,  
15 servants, and employees, and with the permission and consent of their defendant.

16 **JURISDICTION AND VENUE**

- 17 10. This court has subject matter jurisdiction over the action since the defendant's primary  
18 place of business is Vista, California.
- 19 11. Venue is also proper in this judicial district since the defendant's primary place of business  
20 is Vista, California and conducts business in pursuit of the activities described herein within  
21 this judicial district.

22 **FACTUAL ALLEGATIONS COMMON TO CLAIMS OF BREACH OF**  
23 **SETTLEMENT AGREEMENT AND INTENTIONAL INTERFERENCE WITH**  
24 **CONTRACTUAL RELATIONS**

- 25 12. Mountain's Peak and Glacier entered into a Settlement Agreement on or about April 10,  
26 2013. In this Agreement, Mountain's Peak agreed to provide notice to Glacier if  
27 Mountain's Peak acquired a location/customer that was previously a customer of Glacier.  
28 Once this notice was received by Glacier, Glacier would be required to remove its machine

1 and any equipment from the location within 10 business days from the date of the notice so  
2 that Mountain's Peak could begin business operations at the location. If Glacier disputed  
3 Mountain's Peak's new contract, or alleged the customer was currently under contract with  
4 Glacier, then Glacier would be obligated to provide proof of the contract to Mountain's  
5 Peak within ten (10) business days of receipt of the notice. However, Glacier has not on a  
6 continuing basis complied with these agreed terms and has frequently refused to remove its  
7 machines with the specific intent to cause Mountain's Peak to incur more time and expense  
8 when Glacier loses a client. Glacier's failure to remove their machine results in Mountain's  
9 Peak not being able to install their own machines at the location, conduct their business,  
10 and gain income and profits. Glacier does this knowingly and intentionally to thwart  
11 Mountain's Peak's business and goodwill with the ultimate goal to "destroy the  
12 competition". The following are respective examples of Glacier's extreme unfair business  
13 practices well beyond normal competition among competing businesses.

- 14 13. Nicholas Liquor and Gas at 12255 Heacock Street, Moreno Valley, CA 92557. In or  
15 about June 12, 2013, Mountain's Peak entered into a "Water Vending Machine  
16 Commission Agreement" with Nicholas Liquor and Gas through a change of ownership. In  
17 or about June 22, 2013, Mountain's Peak sent a notice letter to Glacier to notify them of the  
18 new contract and to remove their equipment, in compliance with the Settlement Agreement.  
19 This letter was received by Glacier in or about June 26, 2013 by certified mail. Glacier had  
20 not removed their machine from the location until sometime after August 13, 2013, a full  
21 thirty-six days after being notified of the contract and notice to remove. Glacier's failure to  
22 remove their machine was again an intentional act aimed at delaying Mountain's Peak from  
23 installing their machines and making a profit – a direct breach of the Settlement Agreement.
- 24 14. To make matters worse, sometime after Glacier received notification of the contract  
25 between Mountain's Peak and Nicholas Liquor and Gas, a Glacier representative arrived on  
26 the Nicholas Liquor and Gas property and angrily questioned owner Slias Toumeh about  
27 why he decided to sign a contract with Mountain's Peak instead of Glacier, and  
28 subsequently offered Slias Toumeh a \$1,000.00 sign up bonus to sign "go with" Glacier  
instead. Glacier had still not removed their machine from Nicholas Liquor and Gas as of  
July 12, 2013, so Mountain's Peak had to disconnect and install their machine, forcing

Mountain's Peak and Nicholas Liquor and Gas to wait to begin business operations despite Glacier's intentional interference with an existing contract which causes Mountain's Peak to lose profits.

15. Midway Jr. Market at 21700 Markham Street, CA 92570. After the Settlement Agreement was signed, Glacier removed their machines from this location and Mountain's Peak subsequently installed their machine in or about April 15, 2013. However, in or about June 6, 2013, not even two months later, Glacier began sending representatives back to this location attempting to steal the business back from Mountain's Peak by getting the owners to sign a new contract with them. Mr. Awad Awad of Midway Jr. Market was approached by a Glacier representative who offered Mr. Awad a higher percentage commission rate and no fees if he came back to Glacier. Mr. Awad had not even started receiving commission checks from his new relationship with Mountain's Peak before Glacier was trying to get him to sign a new contract with Glacier. This again is a direct breach of the settlement agreement and interference with an existing contract.

16. In or about July 3, 2013, Midway Jr. Market was approached again by Glacier representatives asking what they could do to get the account away from Mountain's Peak. Although Mr. Shade Awad informed the Glacier representatives that they were under contract with Mountain's Peak, the representatives still offered Mr. Awad \$5,000.00, 60% commission, and no fees to switch to Glacier. Glacier accomplished all of this with full knowledge that Mountain's Peak had a valid contract in existence with this location. Again a direct breach of the settlement agreement and intentional interference with existing contract.

17. George's Liquor at 14102 Oxnard St., Van Nuys, CA 91401. In or about June 20, 2013, Mountain's Peak entered into a "Water Vending Machine Commission Agreement" with George's Liquor. Mountain Peak with the consent and authority of George's Liquor sent a notice letter to Glacier signed by the location owner to notify them of the contract and remove their equipment, in compliance with the Settlement Agreement. This letter was received by Glacier in or about June 26, 2013 by certified mail. Glacier had not removed their machine from the location as of July 19, 2013, a full twenty-three days after being notified of the contract and notice to remove. Glacier's machine was still on site more than eighty days later. Glacier's failure to remove their machine was an intentional act aimed at

1 delaying Mountain's Peak from installing their machines and losing profits -- a direct  
2 breach of the Settlement Agreement and intentional interference with an existing contract.

3 18. West Arrow Market, 16146 Arrow Blvd, Fontana, CA 92335. Contract was signed on  
4 August 28, 2013 which was a change in ownership. Notice to remove was sent by certified  
5 mail and was received by Glacier on September 6, 2013. After ten (10) days passed Glacier  
6 did not remove its machine. Mountain Peak installed its machine on Sept 17, 2013 and  
7 removed Glacier's machine from the site to Mountain Peak's storage yard awaiting Glacier  
8 to pick its water machine up. Mountain Peak claims a \$55.00 per day storage fee as well as  
9 a \$200.00 removal and transportation fee. This occurred because when Glacier loses a  
10 contract they just refuse to remove its machine. Glacier during the ten (10) day period went  
11 in and interfered with the Mountain's Peak contract and attempted to convince the customer  
12 to breach the contract with Mountain Peak. Another instance of intentional interference  
13 with existing contract by Glacier.

14 19. Ranch Mercado, 2930 Beverly Blvd., Los Angeles, CA 90057. In or about September 6,  
15 2013, Mountain's Peak entered into a "Water Vending Machine Commission Agreement"  
16 with Rancho Market on Beverly Blvd through an ownership change. Mountain's Peak sent  
17 a notice letter to Glacier to notify them of the new contract and to remove their equipment  
18 in compliance with the Settlement Agreement. This letter was received by Glacier in or  
19 about September 13, 2013 by certified mail. After Glacier received this notice and became  
20 aware of the business relationship between Mountain's Peak and Rancho Market, Glacier  
21 sent representative Mynor Arroyo ("Arroyo") to Rancho to speak with the owner. Instead  
22 of just verifying that there was an ownership change, Arroyo asked to see the Mountain's  
23 Peak contract and offered the owner of the store 55% commission rate if he would sign a  
24 contract with Glacier instead. As a result, on September 25, 2013, Mountain's Peak was  
25 told by the owner that he was not going to allow Mountain's Peak to install their machine  
26 and that he wanted to cancel their contract so he could sign with Glacier. The owner  
27 wanted the 55% commission rate that Glacier had offered him to keep their machine at his  
28 location. Mountain's Peak left the location without installing their machine. Glacier

1 successfully thwarted and interfered with Mountain's Peak's contract and business relations  
2 with Rancho Market.

3  
4 **FACTUAL ALLEGATIONS COMMON TO CLAIMS OF UNFAIR COMPETITION**  
5 **(B&P 17070 Et. seq.), INTENTIONAL INTERFERENCE WITH EXISTING**  
6 **CONTRACT AND TRADE LIBEL (DISPARAGEMENT)**  
7

- 8 20. Glacier is a large, publicly traded company with over 3 million issued shares. Glacier  
9 manages 23,500 machines spanning across 47 of the 50 United States.
- 10 21. By Contrast, Mountain's Peak is a small, local company with a grand total of 140 machines,  
11 which is not publicly traded, has no stock issued to investors, and only spans across  
12 Southern California.
- 13 22. The size difference between the two competitors is enormous and staggering. Despite this,  
14 Glacier has engaged in unfair competition by lowering the prices of their machines to a  
15 significant level with the specific intent to "destroy the competition". Once achieved it is  
16 believed Glacier will increase prices. **Glacier has not lowered its prices on all of its**  
17 **machines. Instead, Glacier only drops the price on the machines in the immediate**  
18 **vicinity of a Mountain's Peak machine.** This is the typical strategy employed by a large,  
19 national entity when attempting to unfairly drive a small, local operation out of business.  
20 Glacier is large enough that it can afford to lose money and drop its prices on a few  
21 machines to an unprofitable level to run its competition out of business and swallow up the  
22 entire southern California market.
- 23 23. Jon's Marketplace/Market at 3667 W. 3<sup>rd</sup> Street, Los Angeles, CA 90020. Glacier has  
24 the Jon's Marketplace business, which is a chain encompassing 13 locations. In 12 of the 13  
25 locations, Glacier's price is set at \$.25 or \$.30 per gallon. The one location that is not set at  
26 those prices is the address above, which is also the only location in direct competition with  
27 a Mountain's Peak machines. Glacier's price at this location is conveniently \$.20 per  
28 gallon. Glacier had moved the price down to \$.15 per gallon for a period of time and then  
back up to \$.20 per gallon, still lower than their price at all the other Jon's Marketplace  
locations. Mountain's Peak has lost significant business as a result.



- 1 24. Also on 3<sup>rd</sup> Street, Mountain's Peak has two other machines at the regular price of \$.35 per  
2 gallon. Again, Glacier has machines located directly across the street from those locations  
3 and within several blocks, where Glacier maintained the price to the unprofitable level of  
4 \$.20 per gallon. The other Glacier machines within a two to three mile radius show their  
5 machines priced at \$.25 per gallon.
- 6 25. Mead Valley Feed at 21621 Cajalco Road, Perris, CA 92570. In or about December 28,  
7 2012, Mountain's Peak entered into a "Water Vending Machine Commission Agreement"  
8 with Mead Valley Feed. Because of the previous litigation and negotiation between Glacier  
9 and Mountain's Peak, Mountain's Peak could not install a machine at Mead Valley Feed.  
10 After the Settlement Agreement was signed and before Mountain's Peak could install their  
11 machine, Glacier installed their own machine on the property. Once discovered, Mountain's  
12 Peak notified Glacier's CEO Brian McInerney by email that Mountain's Peak had a valid  
13 contract with Mead Valley feed and for Glacier to remove their machines. Mr. McInerney  
14 insisted that Glacier had a valid contract with Mead Valley Feed and for Mountain's Peak  
15 to produce their contract.
- 16 26. In or about June 24, 2013, Mountain's Peak delivered proof of its contract with Mead  
17 Valley Feed to Mr. McInerney via email. Yasir Harb, the owner of Mead Valley Feed  
18 denied ever signing a contract with Glacier. Glacier has never produced proof of a contract  
19 with Mead Valley Feed. Glacier refused to remove their water machines from Mead Valley  
20 Feed after six requests from the owner of Mead Valley to remove their machines from his  
21 premises. The purpose of Glacier not removing their machines was to delay and interfere  
22 with Mountain Peak's business.
- 23 27. In or about July 17, 2013 Glacier finally came to Mead Valley Feed, but **not** to remove  
24 their water machines. Instead, Glacier installed four five-foot long sign banners advertising  
25 such price. Only Glacier's machine that was in direct competition and vicinity of  
26 Mountain's Peak was priced at the **unprofitable level of \$.15 per gallon**. Other Glacier  
27 machines within a five mile radius were priced at \$.25 per gallon. Mountain's Peak, as well  
28 as the location owners, has lost significant business and profits as a result of this intentional  
price dumping tactic.
- 29 28. Shop N Go Food Liquor at 11636 Cedar Ave, Bloomington, CA 92316. Glacier had  
operated their water machines in and around Cedar Avenue for a number of years at \$.20

1 per gallon. In or about April 16, 2013, Mountain's Peak entered into a "Water Vending  
2 Machine Commission Agreement" with Shop N Go Food Liquor. Mountain's Peak sent a  
3 certified notice letter to Glacier notifying Glacier of the contract through change of  
4 ownership and to remove their equipment in compliance with the Settlement Agreement.  
5 Glacier received this certified letter in or about May 2, 2013. After receiving this notice,  
6 Glacier did remove their machines in or about May 15, 2013, but bitterly reduced their  
7 price at four surrounding locations to \$.15 per gallon about seven (7) days prior to  
8 removing its machine to take business away from Mountain Peak. A review of Glacier's  
9 machines in a five mile radius found that no other Glacier machines outside of the one in  
10 direct competition with Mountain Peak was lowered to the unprofitable level of \$.15 per  
11 gallon. The Glacier machines that were not in the immediate vicinity, specifically machines  
12 in Rubidoux three miles away, remained at their usual and customary price of \$.25 per  
13 gallon.

14 29. In or about May 15, 2013, Mark Schumm ("Schumm"), a Sales Manager at Glacier, went to  
15 the owner of Shop N Go, Maurice Qatami ("Qatami"), and questioned Qatami as to why he  
16 was going with Mountain's Peak and not Glacier. Schumm made representations that Shop  
17 N Go would not be happy with Mountain's Peak and that Mountain's Peak is a small  
18 company. This was an attempt to "disparage" the product of Mountain's Peak and disrupt  
19 ongoing business dealings. Schumm then asked if Qatami wanted to switch back to Glacier,  
20 knowing that Mountain's Peak already had a contract with Shop N Go. Schumm left a flyer  
21 and his business card with Qatami. This is in direct violation of the Settlement Agreement  
22 and continual interference with existing contracts.

23 30. About one week later, as a result of Glacier's price drop around the area, many of Shop N  
24 Go's customers complained to Qatami about the price difference and were no longer buying  
25 the water from Qatami. Upset and angry over his lost business, Qatami told Mountain's  
26 Peak that he was not happy about losing customers and threatened to go back to Glacier.  
27 This caused trouble and tension between Shop N Go and Mountain's Peak over the lost  
28 business.

29 31. Guadalajara Meat Market at 2950 West Ball Rd., Anaheim, CA 92804 . Glacier owned  
30 the contract at a Chevron located across the street from the above location. Before the  
31 Settlement Agreement, Glacier's price at this Chevron was \$.25 per gallon. The parties

1 agreed in the Settlement Agreement that Mountain's Peak was entitled to the business of  
2 Guadalajara Meat Market. After the Settlement Agreement was signed, Glacier dropped the  
3 price of their vending unit across the street from Guadalajara Meat Market from \$.25 to  
4 \$.15 per gallon. None of the other Glacier machines outside of this area had their price  
5 dropped.

6 32. The business and income began to drop so significantly at this location for Mountain's Peak  
7 that on July 24, 2013, Mountain's Peak had to remove its vending machine altogether.

8 33. Jim's Liquor at 8879 Laurel Canyon Blvd., #B, Sun Valley, CA 91352. In or about  
9 December 14, 2012, Mountain's Peak entered into a "Water Vending Machine Commission  
10 Agreement" with Jim's Liquor due to a change of ownership. This contract gave  
11 Mountain's Peak the exclusive right to install, operate, and maintain all water vending  
12 machines on the business premises. That same day, Mountain's Peak sent notice via  
13 registered mail to Glacier informing Glacier of the contract and providing notice signed by  
14 the location owner for Glacier to remove their machine. This letter was received by Glacier  
15 in or about December 19, 2012.

16 34. The Settlement Agreement, executed in or about April 10, 2013, further confirmed  
17 Mountain's Peak had the right to contract with the business owner at this location.  
18 However, Glacier contacted the owner of the real property to place a water machine on the  
19 premises close to the business owner of Jim's Liquor. In fact Glacier placed their water  
20 vending machine three feet away from the Mountain's Peak machine on the property, and at  
21 a price \$.10 lower than Mountain's Peak to drive them out of this location. Mountain's  
22 Peak discovered this in or about July 25, 2013. The presence of Glacier's machine greatly  
23 disrupted the business of Mountain's Peak on this property where it was supposed to be  
24 Mountain's Peak's right to operate. As a result of the lost business and profit, Mountain's  
25 Peak was forced to remove its vending machine and has since lost all profits from this  
26 location.

27 35. Greenfield Drive-In Dairy at 8303 S. Normandie Ave., Los Angeles, CA 90044.  
28 Mountain's Peak has operated a vending machine at the above location since approximately  
29 May 2011. Glacier has owned a water machine across the street at a coin laundry  
30 establishment, also for many years. Before the start of litigation between the parties, Glacier  
31 operated this location at \$.25 per gallon. After the Settlement Agreement was executed

1 Glacier reduced the price of only that machine down to \$.20 per gallon. Mountain's Peak  
2 was vending at \$.35 per gallon. This caused a significant drop in income and profit for  
3 Mountain's Peak and has also become a source of tension between Mountain's Peak and the  
4 owner of Greenfield Drive-In Dairy. The owner's customers have complained to the owner  
5 that they are being ripped off because of the price difference. A review of Glacier's  
6 machines located over a mile away shows that Glacier kept their other machines, not in  
7 direct competition with Mountain's Peak, at \$.25 per gallon.

8 36. Rancho Market at 524 S. Verdugo Dr., Burbank, CA 91502. In or about December 14,  
9 2012, Mountain's Peak entered into a "Water Vending Machine Commission Agreement"  
10 with Rancho Market after an ownership change. This contract gave Mountain's Peak the  
11 exclusive right to install, operate, and maintain all water vending machines on the business  
12 premises. Mountain's Peak's price was the standard \$.35 per gallon. Glacier continued to  
13 operate a machine across the street at \$.20 per gallon. Mountain's Peak was forced to  
14 remove its machine due to lost business and profits.

15 37. In or about September 9, 2013, Glacier then took the location where Mountain's Peak was  
16 forced to remove from and installed their own machine. Now Glacier has both Rancho  
17 Market and the location across the street. Coincidentally, once Mountain's Peak was out of  
18 the picture, Glacier then began operating both locations at \$.25 per gallon. A review of  
19 other Glacier machines in the area not in direct competition with Mountain's Peak showed  
20 no other machine priced at \$.20 per gallon.

21 38. Lavanaderia Azul at 13100 Van Nuys Blvd., Pacoima, CA 91331. In or about October  
22 10, 2012, Mountain's Peak entered into a "Water Vending Machine Commission  
23 Agreement" with Lavanaderia Azul with a price of \$.35 per gallon. Less than two blocks  
24 away, Glacier had two machines located at Tresieras Supermarket. Glacier operated these  
25 machines at \$.20 per gallon causing Mountain Peak to lose profits. In or about September  
26 13, 2013, Glacier approached the owner of Lavanaderia attempting to interfere with  
27 Mountain's Peak's contract and then convinced the owner to switch to Glacier based on a  
28 price of \$.25 per gallon. Mountain's Peak was subsequently notified by the owner of  
29 Lavanaderia that their current contract was terminated, and Glacier would be the new  
30 vendor.

1 39. United Produce at 222 E. Manchester Ave., Los Angeles, CA 90001. In or about  
2 November 2012 the owner of this location was contacted by an independent machine  
3 placement locator inquiring about the location and if this location was interested in talking  
4 to a new vendor for water vending services. The owner of this location said that he didn't  
5 know if he already had a contract with Glacier. The store owner was told to confirm  
6 whether he was under contract before they could continue in any negotiations. In or about  
7 April 2013, the store owner said that he made multiple requests to Glacier representative  
8 Jerry Richmond and was never given a copy of a contract. Finally, after never hearing back  
9 from Glacier, the owner sent via fax a notice to Glacier to remove their machines in or  
10 about the beginning of June 2013. The store owner said that within a few days of receiving  
11 the fax, he was visited by the Glacier Regional Sales Manager Jerry Richmond who handed  
12 him a copy of a contract that was still in force. The store owner said that Jerry Richmond  
13 then said to him "I know that the company that you are trying to replace us with is  
14 Mountain's Peak. We just went through a lawsuit with that company and you don't want to  
15 go with them. All they do is come in and throw around all kinds of money to get your  
16 account and you won't be happy with them". This was an attempt to defame Mountain's  
17 Peak Water and to disrupt future prospective business dealings – a direct breach of the  
18 Settlement Agreement.

19 40. Glacier has systematically lowered the prices to an unprofitable level at its locations in the  
20 direct vicinity and competition with Mountain's Peak. Glacier, the enormous company that  
21 it is, is aware that it has the financial capability to operate at a loss at a few select locations  
22 long enough to drive the smaller Mountain's Peak out of business. Glacier is fully aware  
23 that Mountain's Peak does not have the ability to operate at those prices and will be forced  
24 to pull its machines out. Glacier's intentional scheme is evident by the pictures and facts  
25 indicating that only the prices at the Mountain's Peak locations were lowered while the  
26 prices of all other machines remained the same. Glacier even raised the price back up to the  
27 profitable level of \$.30 per gallon at Mercado Numero Uno once it was given to Glacier in  
28 the Settlement Agreement and Glacier was no longer in competition with Mountain's Peak  
at this location. It is believed all these actions were approved by upper level management of  
Glacier.

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**FIRST CLAIM FOR RELIEF**

**(Breach of Settlement Agreement)**

41. Plaintiff Mountain's Peak hereby restates and reincorporates by reference paragraphs through 40 above, as though set forth in full herein.

42. In or about April 10, 2013 Plaintiff Mountains Peak and Defendant Glacier entered into a valid written settlement agreement attached at Exhibit A. As stated above, since the execution of this Agreement, Defendant Glacier has failed to perform the terms and conditions of that Agreement which were clearly laid out for each of the parties to follow.

43. Defendant breached this agreement by not following the express terms of this agreement including but not limited to (1) not removing their water vending machines in the timely manner required by the contract, (2) interfering with locations that remained with Mountain Peak as a result of this settlement agreement, and disparagement by sales management at Glacier. Plaintiff has performed all the covenants, promises, obligations, and conditions under the Agreement except to the extent performance was prevented, obstructed or hindered by Defendant Glacier. These multiple breaches by Glacier have caused harm to Mountain's Peak by not allowing Mountain's Peak to install its machines and start its business. As a result of such breach, Mountain's Peak has suffered injury and damage to its business and goodwill in an amount to conform to proof at the time of trial, but in no event less than the jurisdictional minimum of this Court.

**SECOND CLAIM FOR RELIEF**

**(Intentional Interference with Contractual Relations)**

44. Plaintiff Mountain's Peak hereby restates and incorporates by reference paragraphs 1 through 43 above, as though set forth in full herein.

45. Plaintiff alleges on information and belief that Defendant Glacier and Does 1 through 20, have willfully and deliberately committed the wrongful acts alleged herein with the intent

1 to interfere with the contractual relations between Mountain's Peak and its Vending  
2 Machine Commission Agreements it has with its business clients. (1) Mountain's Peak had  
3 valid and enforceable contracts with all of the above location owners for the exclusive right  
4 to operate at that location. (2) Glacier knew of the contracts between Mountain's Peak and  
5 the various location owners because Mountain's Peak sent the required notice to Glacier  
6 each time a location was acquired. Glacier was also aware of the contract between Glacier  
7 and various location owners because they were transcribed and agreed to in the Settlement  
8 Agreement. (3) Further, Glacier sent representatives to some of the locations to harass and  
9 coerce the location owners to switch over to Glacier. Glacier made false representations to  
10 those owners that Mountain's Peak was unreliable and not capable of providing quality  
11 service, all with the intent to induce these owners to breach their contracts with the Plaintiff  
12 and (4) Glacier's acts were intentional and designed to disrupt Mountain's Peak's economic  
13 relationship with the location owners and (5) Plaintiff Mountain Peak has been damaged.

14 46. As a proximate result of such wrongful acts, Mountain's Peak has suffered injury and  
15 damage to its business and goodwill in an amount to conform to proof at trial, but in no  
16 event less than the jurisdictional minimum of this Court.

17 47. Plaintiff Mountain's Peak is informed and believes, and thereon alleges, that the acts of  
18 Defendant Glacier and Does 1 through 20, in interfering with its contractual relations with  
19 its business owners were willful and malicious and designed to obstruct and otherwise  
20 interfere with the successful operation of Mountain's Peak's business.

21 48. Plaintiff Mountains Peak has been damaged by these intentional acts of interference. As a  
22 result Mountains Peak has suffered injury and damage to its business and goodwill in an  
23 amount to conform to proof at the time of trial, but in no event less than the jurisdictional  
24 minimum of this Court.

25 49. Mountain's Peak therefore is entitled to recover exemplary and punitive damages in a sum  
26 sufficient to punish said defendants. Glacier's acts were against public policy with the  
27 specific intent to injure Mountain Peak. As a result, Punitive Damages should be awarded  
28 to punish Defendant Glacier so Glacier ceases such outrageous acts.

1 **THIRD CLAIM FOR RELIEF**

2 **(Trade Libel/ Disparagement)**

3 50. Plaintiff Mountain's Peak hereby restates and incorporates by reference paragraphs  
4 1 through 49 above, as though set forth in full herein.

5 51. Plaintiff Mountain's Peak is informed and believes and thereon alleges Defendant Glacier  
6 and Does 1 through 20, and each of them, have (1) made false and defamatory statements  
7 regarding Mountain's Peak's services and (2) that Defendant Glacier and Does 1 through  
8 20 knew such statements were false at the time they were made. (3) These statements were  
9 made with malice and intent to injure Mountain's Peak's business and business reputation.

10 52. As a result of such trade libel, Mountain's Peak has suffered injury and damage to its  
11 business and goodwill in an amount to conform to proof at the time of trial, but in no event  
12 less than the jurisdictional minimum of this Court.

13 53. Mountain's Peak therefore is entitled to recover exemplary and punitive damages in a sum  
14 sufficient to punish said defendants. Glacier's acts were against public policy with the  
15 specific intent to injure Mountain Peak. As a result, Punitive Damages should be awarded  
16 to punish Defendant Glacier so Glacier ceases such outrageous acts.

17 **FOURTH CLAIM FOR RELIEF**

18 **(Unfair Competition)**

19 **(Violation of Cal. Bus. & Prof. Code §17070 et. seq.)**

20  
21 54. Plaintiff Mountain's Peak hereby restates and reincorporates by reference paragraphs 1  
22 through 53 above, as though set forth in full herein.

23 55. Defendant Glacier offered for sale and sold to purchasers, for whom plaintiff and defendant  
24 compete, quantities of water at a price of \$.15 and \$.20 per gallon. These offers of sales  
25 were made below cost, in that these prices are below standard market value. Defendant only  
26 lowered the prices on its locations in the immediate vicinity and in direct competition with  
27 Mountain's Peak locations. Defendant Glacier kept the price of its water on its other  
28 locations not in direct competition with Mountain's Peak at a profitable level of at least  
\$.25 per gallon and higher. Once Glacier drove Mountain's Peak out of the area, Glacier



1 restored its prices back to a profitable level of at least \$.25 per gallon. A representative  
2 selection of photographs reflecting this practice is attached at **Exhibit B** as though fully  
3 pled herein.

4 56. Plaintiff is informed and believes, and thereon alleges that, Defendant performed the above-  
5 mentioned acts for the purpose of injuring Plaintiff, its competitor with the specific intent to  
6 drive Mountain Peak out of business.

7 57. This unfair practice also offends public policy besides being unethical, immoral,  
8 oppressive, unscrupulous, and substantially injurious to lawful competition.

9 58. As a proximate result above the above mentioned acts of defendant, plaintiff has been  
10 damaged by these current and future pricing actions in an amount of at least \$ 100,000.  
11 trembled to the sum of \$ 300,000.

12 59. Defendant Glacier threatens to, and unless restrained, will continue to price fix and offer to  
13 sell and sell to purchasers the above-mentioned water below cost.

14  
15 **FIFTH CLAIM FOR RELIEF**

16 **Temporary and Permanent Injunctive Relief and**  
17 **For Treble Damages for Prohibited Business Practice)**

18 **(Cal. Bus. & Prof. Code §17070; 17078-82; 17040; 17043-49)**

19  
20 60. Plaintiff Mountain's Peak hereby restates and reincorporates by reference paragraphs 1  
21 through 59 above, as though set forth in full herein.

22 61. Defendant Glacier offered for sale and sold to purchasers, for whom plaintiff and defendant  
23 compete, quantities of water at a price of \$.15 and \$.20 per gallon. These offers of sales  
24 were made below cost, in that these prices are below standard market value. Defendant only  
25 lowered the prices on its locations in the immediate vicinity and in direct competition with  
26 Mountain's Peak locations. Defendant Glacier kept the price of its water on its other  
27 locations not in direct competition with Mountain's Peak at a profitable level of at least  
28 \$.25 per gallon and higher. Once Glacier drove Mountain's Peak out of the area, Glacier  
restored its prices back to a profitable level of at least \$.25 per gallon.

1 62. Plaintiff is informed and believes, and thereon alleges that, Defendant performed the above-  
2 mentioned acts for the purpose of injuring Plaintiff, its competitor with the specific intent to  
3 drive Mountain Peak out of business.

4 63. Defendant Glacier threatens to, and unless restrained, will continue to offer to sell and sell  
5 to purchasers the above-mentioned water below cost.

6 64. As a proximate result above the above mentioned acts of defendant, plaintiff has been  
7 deprived of the patronage of a large number of their actual and potential customers, all to  
8 their damages in the sum of \$792,810, trebled to the sum of \$2,378,430.

9  
10 **SIXTH CLAIM FOR RELIEF**

11 **Punitive Damages**

12 65. Plaintiff Mountain's Peak hereby restates and reincorporates by reference paragraphs 1  
13 through 64 above, as though set forth in full herein.

14 66. California Civil Code Section 3294 awards exemplary damages where it is proven by clear  
15 and convincing evidence that the defendant and DOES 1-20 have been guilty of oppression,  
16 fraud, and malice, the cross-complainant, in addition to the actual damages, may recover  
17 damages for the sake of example and by way of punishing the defendants.

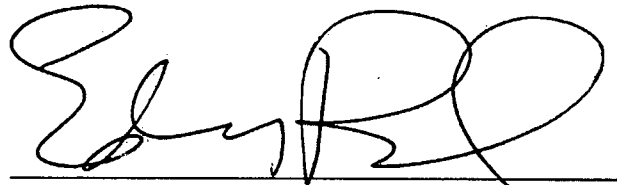
18 67. In the instant case, defendant Glacier engaged in various unlawful acts as described herein  
19 which clearly shows "interference with existing contract" and "trade libel (disparagement)"  
20 thus subjecting Glacier to punitive damages based on their egregious and unlawful conduct.

21 68. Accordingly, these egregious actions of Glacier were done in pure disregard of the rights of  
22 the Plaintiff Mountains Peak. Thus, to set an example to prevent these despicable activities  
23 from being continuing in the future, punitive damages should be awarded to Plaintiff  
24 Mountain's Peak according to proof at trial.

25 **WHEREFORE, Plaintiff F K B INCORPORATED, a California Corporation dba**  
26 **MOUNTAIN'S PEAK WATER prays Judgment against Defendant GW SERVICES, LLC dba**  
27 **GLACIER WATER SERVICES as named in the claims for relief, put forth above, as follows:**  
28

1. On the First Cause of Action for Breach of Settlement Agreement for compensatory damages according to proof at trial;
2. On the Second Cause of Action for Intentional Interference with Contractual Relations for compensatory and punitive damages according to proof at trial;
3. In the Third Cause of Action for Trade Libel/ Disparagement compensatory, special, and punitive damages according to proof of trial;
4. On the Fourth Cause of Action for Unfair Competition (B&P 17070 et. seq.), compensatory and treble damages according to proof at trial.
5. On the Fifth Cause of Action for Temporary and Permanent Injunctive Relief and Treble an Order directing Defendants not to engage in any unlawful, unfair, and fraudulent business practices with respect to reducing or eliminating the competition according to proof at trial.
6. On the Sixth Cause of Action for Punitive Damages based on their actions according to proof at trial.
7. For reasonable attorney's fees where provided by statute including attorney fees authorized by B&P 17070 et. seq.
8. For costs of suit herein incurred; and
9. For such other relief as the Court deems just.

Dated: September 27, 2013



Edward A. Rose, Jr.  
Attorney for Plaintiff F K B INCORPORATED, a  
California Corporation dba MOUNTAIN'S PEAK  
WATER

1  
2 VERIFICATION  
3  
4


5 I, FORREST BALMAIN, declare as follows:

6 I am the President of F K B Incorporated, a California Corporation dba Mountain's Peak Water, who is  
7 the Plaintiff in this action, and I have read the foregoing Verified Complaint for Breach of Settlement  
8 Agreement, Intentional Interference with Contractual Relations, Trade Libel/Disparagement, Unfair  
9 Competition (B&P 17070 et. seq.), Temporary and Permanent Injunctive Relief (B&P 17070 et. seq.),  
and Punitive Damages and know its contents.

10 The matters stated in the Verified Complaint for Breach of Settlement Agreement, Intentional  
11 Interference with Contractual Relations, Trade Libel/Disparagement, Unfair Competition (B&P 17070  
12 et. seq.), Temporary and Permanent Injunctive Relief (B&P 17070 et. seq.) and Punitive Damages are  
13 true based on my own knowledge, except as to those matters stated on information and belief, and as to  
those matters I believe them to be true.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
15 and correct.  
16

17 Executed on September 27, 2013 at Valencia, California

18  
19   
20 FORREST BALMAIN, President  
21 F K B Incorporated, a California Corporation dba Mountain's Peak Water  
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# EXHIBIT A

01/02/2014

**SETTLEMENT AGREEMENT**  
**AND MUTUAL GENERAL RELEASE**

This Settlement Agreement and Mutual General Release (the "Settlement Agreement") is entered into as of April 10, 2013 by and between GW Services, LLC dba Glacier Water Services ("Glacier Water" or "Plaintiff"), on the one hand, and FKB Incorporated, dba Mountain's Peak Water ("Mountain Peak"), Victor Merchant ("Merchant"), and George Goldman ("Goldman") (collectively "Defendants"), on the other hand. (Plaintiff, Mountain Peak, Merchant and Goldman are sometimes each referred to individually as a "Party" and collectively as the "Parties").

**RECITALS**

A. Plaintiff is a corporation, duly organized and existing under the laws of the State of California, with its principal place of business located at Vista, California.

B. Mountain Peak is a dba of FKB Incorporated, a corporation, organized under the laws of the State of California, with its principal place of business in Valencia, California.

C. Merchant is an individual locator who works as an independent contractor, sometimes on behalf of Mountain Peak, and who previously worked for Aqua Fill.

D. Goldman is an individual locator who works as an independent contractor, sometimes on behalf of Mountain Peak.

E. On or about November 20, 2012, Plaintiff instituted an action against Defendants in the Superior Court of the State of California, County of Los Angeles, Central District, entitled *GW Services, LLC dba Glacier Water Services v. Mountain's Peak Water, et al.*, Case No. BC496020 for Intentional Interference with Contractual Relations; Intentional Interference with Prospective Economic Advantage; and for Unfair Competition

F. On or about March 4, 2013, Defendant Goldman was defaulted.

G. On or about March 4, 2013, Defendant Merchant was defaulted.

H. Plaintiff and Mountain Peak entered into various stipulations to continue Mountain Peak's answer and cross-claim date, and Mountain Peak provided to Plaintiff an unfiled cross-complaint against Plaintiff for Intentional Interference with Contractual Relations;

Intentional Interference with Prospective Economic Advantage and various other alleged economic tort claims (the "Cross-Complaint").

I. Together, the Complaint and Cross-Complaint shall be referred to as "the Action."

J. The Action relates to a dispute regarding the placement and maintenance of certain water dispensing machines located in various store/market locations (many of which used to be owned by Aqua Fill, and that were serviced by Merchant, but that were later sold to Glacier Water). Plaintiff alleged that Merchant and Goldman, who subsequent to the Aqua Fill sale, acting as independent contractors for Mountain Peak, were using their knowledge about old Aqua Fill contracts to steal those accounts away from Glacier Water and place them into Mountain Peak. Glacier Water further alleged a pattern and practice on the part of each of the Defendants to interfere with active Glacier Water contracts and sabotage Glacier Water Machines for Mountain Peak's benefit. Mountain Peak denied all such allegations and counterclaimed that Glacier Water interfered with its own contracts, strong-armed store owners to renew their contracts at Mountain Peak's expense and engaged in a pattern and practice of sabotaging Mountain Peak's machines.

F. Without any admission of fault or wrongdoing by any person or entity, to avoid further litigation expense and inconvenience, and to obtain repose with respect to the pending claims and any future claims regarding, among other things, the allegations in the Action, the Parties have agreed to settle their disputes and to enter into this Settlement Agreement on the following terms.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and warranties contained herein and for other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals

The foregoing recitals are an integral part of this Agreement and are incorporated herein by this reference as if set forth in full.

2. Payment

In exchange for, and in addition to, the promises and representations made herein, Mountain Peak shall pay eleven thousand dollars and no cents (\$11,000.00) to GW Services, LLC by check, sent by certified mail, to be delivered to GW Services, LLC within five days of the full execution of this Agreement.

3. No Admission of Liability

This Settlement Agreement is a compromise of disputed claims. Nothing in this Settlement Agreement is intended to be, nor shall be viewed or construed as, an admission of liability by the Parties as to the allegations in the Complaint, the unfiled Cross-Complaint or otherwise. Further, nothing in this Settlement Agreement shall be deemed an admission of any fact, claim, or wrongdoing by or on behalf of any person or entity.

4. Dismissal of the Action and Release of Defaults

(a) Within five Court days after the complete execution of this Agreement by all Parties, Plaintiff shall file a dismissal of the Complaint without prejudice.

(b) Plaintiff agrees to timely release the defaults against Merchant and Goldman.

(c) Mountain Peak, and each of the other Parties agrees that he or it shall relinquish his or its right to file the Cross-Complaint, or any responsive pleading.

5. Settlement Terms

(a) Application. The terms of this provision shall apply to all locations owned by Mountain Peak and Glacier Water. Notwithstanding the foregoing, the Parties agree that, in order to resolve multiple disputed claims regarding the rightful contractual status of certain specific locations, the contractual status of those locations shall be resolved as follows :

Super Farms Market – to be administered by Glacier Water  
Los Compadres Meat Market – to be administered by Mountain Peak  
Mead Valley Market - to be administered by Mountain Peak  
El Ranchito Market - to be administered by Glacier Water  
Danny's Liquor - to be administered by Glacier Water  
Mercado Numero Uno - to be administered by Glacier Water  
Fontana Market - to be administered by Glacier Water (inclusive of the contract signed  
1/30/2013 by Fontana Market)  
Jim's Liquor - to be administered by Mountain Peak  
J.R. Market – to be administered by Mountain Peak  
Breed's Market - to be administered by Mountain Peak  
Midway Market, Jr. - to be administered by Mountain Peak  
Guadalajara Market - to be administered by Mountain Peak  
Bob's Market - to be administered by Glacier Water  
P&J Deli Market - to be administered by Mountain Peak  
El Toro Ranch Market - to be administered by Mountain Peak



H&H Liquor - to be administered by Mountain Peak  
RPG/Union 76 - to be administered by Mountain Peak  
Mexicana Meat Market (Azusa) - to be administered by Glacier Water  
Montclair Farmer's Market - to be administered by Glacier Water

(b) Intent to Bind Locators or Other Third Parties. Mountain Peak acknowledges, for purposes of this settlement only, that while it does not legally control the actions of its independent contractor "locators," such as Goldman or Merchant, that it will instruct such locators, third parties or direct associates, whether or not they are party to this Agreement, to abide by the terms of this Agreement and will take responsibility therefore.

Glacier Water acknowledges, for purposes of this settlement only, that it will instruct its associates, whether or not they are party to this Agreement, to abide by the terms of this Agreement and will take responsibility therefore.

(c) Communications Regarding Change In Vendors or Change Of Owners. The Parties agree that if a location is going to change vendors, whether or not such change is occasioned by a change of ownership of the location or normal expiration of contract term, that notice of such change should be provided by certified mail to the other side at least 10 days before the proposed change, and such notice should be accompanied by a signed writing from the new owner confirming the change of ownership (with evidence of ownership change if possible) and/or desire to change vendors. This provision is specifically intended to avoid disputes as to, without limitation, the ownership change or the right of the owner to change vendors (i.e., the lapse of the contract). By way of example only, if Glacier Water notifies Mountain Peak of a change of vendor due to a change of ownership of a particular location, then Mountain Peak shall have ten days before the actual change, as determined by the alleged new contract date, to contact Glacier Water to challenge the change because it alleges that the store's notice was late or for any other reason.

(d) Removal of Equipment. Subject to the provisions in 5(c), the Parties agree that to the extent that there is a change of ownership and/or a related change in vendors, that the party acquiring the location shall provide notice to the other side such that the other side can timely arrange for the removal of its equipment from the premises. The Parties agree that, if the notice is not disputed, it will remove its equipment within 10 business days or at such time as the contract legally expires if later. The Parties further agree that unless there is a specific written request from the owner, the Parties shall not remove any utilities connecting their machines to the location. In the event a store owner does request removal of utilities that fact shall be promptly communicated to the other Party as per part (c) directly above.

(e) Agreement Not To Tamper With Equipment. The Parties agree that they will not

physically harm the other parties' equipment, will not unplug/disconnect the machines or tamper with them in any way.

(f) Dispute Resolution Protocol. Upon receipt of a notice of change of ownership or vendor that is disputed by either Glacier Water or Mountain Peak, either party may initiate a dispute resolution procedure as follows:

- (i) The parties shall have ten days to informally work out a resolution. If they cannot do so, the following shall occur:
- (ii) The parties within ten days shall agree on a single impartial arbitrator to hear disputes.
- (iii) The parties shall promptly (within five days) submit a one-page summary of the complaint and a one- page response to such complaint, along with any supporting documentation; copies of same shall timely be provided to the opposing party;
- (iv) The arbitrator shall promptly decide the dispute on the papers, without attorneys and without a hearing;
- (v) The arbitrator may contact a party designee via any medium (letter, phone, email, etc.) to answer any questions she/he may have;
- (vi) The arbitrator's decision shall be final and non-appealable.
- (vii) The losing party pays the arbitrator's fees, which fees shall be capped at \$500 per dispute; each side to otherwise bear all costs and attorneys' fees.
- (viii) In order to avoid any abuse of such dispute resolution process, if any party files any dispute that the arbitrator deems to be frivolous or that the arbitrator deems was filed simply to create cost/expense/delay for the other side, the other party may, at its discretion, thereafter opt out of the dispute resolution process.
- (ix) Upon final ruling by the arbitrator, the losing party has ten business days to remove its equipment from the previously disputed location.

6. Notices and Delivery

Any notice or communication required or permitted to be given by any of the Parties pursuant to this Settlement Agreement shall be sent by email, hand-delivery, registered or certified mail or by overnight delivery service to the addresses specified below. Any notice sent in accordance with this paragraph shall be deemed received on the day of delivery if hand delivered or emailed, one business day after deposit if sent via an overnight delivery service, and two business days after deposit if registered/certified mailed.

If to Glacier Water:

Glacier Water Services, Inc.  
Attn: CFO  
1385 Park Center Drive  
Vista, CA 92081-8338

If to Mountain Peak:

Mountain's Peak Water  
Forrest Balmain  
23890 Copper Hill Drive, No. 127  
Valencia, CA 91354

7. Mutual Release of Claims

(a) Except with respect to the obligations, representations and warranties set forth in this Settlement Agreement, Plaintiff, on its own behalf and (as applicable) on behalf of each of its heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, with Plaintiff, the "Plaintiff Releasors"), hereby irrevocably releases and forever discharges each of the Defendants and (as applicable) each of the Defendants' heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies s, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, the "Defendant Releasees"), from any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees, at law or in equity, of every kind, nature, character, and description,

whether known or unknown, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, arising from or relating to the subject matter of the Action, or which were or could have been (in the past, now or hereafter) asserted in (1) the Action, (2) the events and circumstances giving rise to the Action; and (3) any part of the Action or the prosecution or defense thereof.

(b) Except with respect to the obligations, representations and warranties set forth in this Settlement Agreement, Defendants, on their own behalf and (as applicable) on behalf of each of their heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, with Defendants, the "Defendant Releasers"), hereby irrevocably releases and forever discharges Plaintiff and (as applicable) each of Plaintiff's heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, the "Plaintiff Releasees"), from any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees, at law or in equity, of every kind, nature, character, and description, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, arising from or relating to the subject matter of the Action, or which were or could have been (in the past, now or hereafter) asserted in (1) the Action, (2) the events and circumstances giving rise to the Action; and (3) any part of the Action or the prosecution or defense thereof.

(c) The claims set forth in subparagraphs 7(a) and 7(b) above are collectively and severally referred to herein as the "Released Claims." In entering into this mutual release of claims, each party to this Settlement Agreement acknowledges and agrees that this Paragraph 7 is intended to constitute a full mutual release of claims regardless of the existence or effect of any unknown, unsuspected, or unanticipated claim or fact. Each party to this Settlement Agreement acknowledges and agrees that claims or facts in addition to or different from those which he or it now knows, believes, or suspects to exist might hereafter be discovered; nevertheless, it is his or its intention by entering into this Settlement Agreement to fully, finally, and forever release, discharge, and settle all such claims, notwithstanding the existence or possible future discovery of any such additional or different claims or facts, which will in no manner affect this Settlement Agreement or the mutual release of claims set forth in this Paragraph 7. Consistent with that intention, each party to this Settlement Agreement expressly, voluntarily, and knowingly waives, relinquishes, and abandons each and every right, protection, and benefit concerning the claims to which he or it otherwise would or might be entitled now or

at any future time under Section 1542 of the California Civil Code (and all similar provisions of law), which provides:

"CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

8. Representations, Warranties, and Indemnification

(a) Each Party to this Settlement Agreement represents and warrants that he or it has not previously assigned, transferred, pledged, or hypothecated any claim covered in this Settlement Agreement, and will not do so in the future, nor knows of any person or entity not a party to this Settlement Agreement having (or claiming to have) any interest in any Released Claims.

(b) The Parties each agree that he or it shall fully defend, indemnify, and hold harmless the other and (as applicable) each of his or its heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them, from and against any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees relating to, arising out of, or resulting from the assertion by any person or entity relating to any of the claims released pursuant to this Settlement Agreement which that party assigned, transferred, pledged, or hypothecated contrary to the representations in this Agreement. It is the intention of the Parties that this indemnity not require payment by the indemnified party as a condition precedent to recovery under this indemnity.

9. No Release of any Non-Settling Party

In the event that one or more parties to the Action does not sign this Agreement, nothing in this Agreement shall be construed as a release by Plaintiff of any claims, rights or remedies to recover damages, costs, expenses or attorneys' fees from any such non-signing party.

10. Parties to Bear Their Own Costs and Attorney Fees

Plaintiff on the one hand, and the Defendants, on the other hand, shall bear all of his or its own costs and attorneys' fees incurred in connection with the Action and anything in connection with the execution of this Settlement Agreement.

11. Voluntary Agreement

The parties to this Settlement Agreement acknowledge that they have read and understand each of the provisions set forth herein, that they have had the opportunity to consult with counsel of their own choice, and that this Settlement Agreement is entered into freely, voluntarily, and without any duress or undue influence.

12. Other Documents

Each party to this Settlement Agreement agrees to promptly execute and deliver any and all other documents or instruments which are necessary or appropriate to effectuate any of the provisions of this Settlement Agreement.

13. Successors

This Settlement Agreement is binding upon and shall inure to the benefit of each of the parties, and to each of their respective successors and heirs.

14. Integration

This instrument contains the entire agreement and understanding of each of the parties with respect to its subject matter, and any and all other discussions, negotiations and representations relating to the subject matter hereof are merged into this Settlement Agreement. No other agreement or representation, whether written, oral, or implied shall be deemed to exist or bind the parties with respect to the subject matter of this Settlement Agreement.

15. Severability

In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Settlement Agreement, the remainder of this Settlement Agreement shall be fully enforceable.

17. No Undisclosed Claims

Each of the parties to this Settlement Agreement warrants and represents that he and it knows of no actual, potential or threatened claims or causes of action, whether presently existing or potentially arising in the future, against any of the parties of the other side, or their heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partnerships, joint ventures, predecessors, successors, and assigns, except for the claims and causes of action that have been released hereunder.

18. Waiver, Modification, or Amendment

No provision or breach of this Settlement Agreement may be waived unless in writing signed by the party to be charged, and waiver of any one provision or breach of this Settlement Agreement shall not operate as a waiver of any other provision or breach of this Settlement Agreement. This Settlement Agreement may be modified or amended only by a written instrument executed by each party.

19. Construction

California law shall govern the validity, construction, interpretation, and enforcement of this Settlement Agreement.

20. Titles and Captions

The paragraph titles contained in this instrument are for convenience and reference only, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or the intent or agreement of the parties with respect to any provision hereof.

21. Advice of Counsel

The Parties represent and warrant to each other that they have conferred with counsel of their own choosing in negotiations for and the preparation of this Settlement Agreement, and that they have read this Settlement Agreement or have had the same read to them by their counsel, and that they are fully aware of its contents and legal effect.

22. Construction and Interpretation

The Parties acknowledge, warrant and represent that the Parties and their counsel have each participated in the drafting of this Settlement Agreement and each provision hereof, that the

Settlement Agreement shall be construed as a whole according to its fair meaning, and that the Settlement Agreement shall not be construed or interpreted against any Party because a provision or the Settlement Agreement as a whole was prepared, drafted or requested by such Party.

23. Confidentiality

The terms of this Settlement Agreement are confidential as between the Parties, and each Party agrees that it will not disclose or communicate the terms of this Settlement Agreement except to its professional advisors, or otherwise as required by law or for other legal, regulatory or accounting purposes.

24. Authorization to Enter into Settlement Agreement

Each Party represents and warrants that it is fully authorized to enter into this Settlement Agreement and to provide the releases set forth herein, and that no further consent or authority is needed from any other person, corporation or entity to make this Settlement Agreement fully effective and binding.

25. Signatures

This instrument may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single agreement. Each party may rely upon the signature of any other party if received in facsimile or "pdf" form by fax, e-mail, or other magnetic or electronic transmission, provided the recipient has no knowledge or reason to believe the signature is not authentic or its delivery has not be properly authorized. Upon request by a recipient, the delivering party shall provide an original signature in confirmation of the facsimile previously delivered.

01/03/2014



IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date set forth above.

GW SERVICES, LLC dba  
GLACIER WATER SERVICES

FKB INCORPORATED dba  
MOUNTAIN'S PEAK WATER

By: Brian Melan  
Its: CEO

By: Forrest Belman 4/11/13  
Its: PRESIDENT

George Goldman  
George Goldman

Victor Merchant  
Victor Merchant

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date set forth above.

GW SERVICES, LLC dba  
GLACIER WATER SERVICES

FKB INCORPORATED dba  
MOUNTAIN'S PEAK WATER

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: Forest Balman 4/11/13  
Its: PRESIDENT

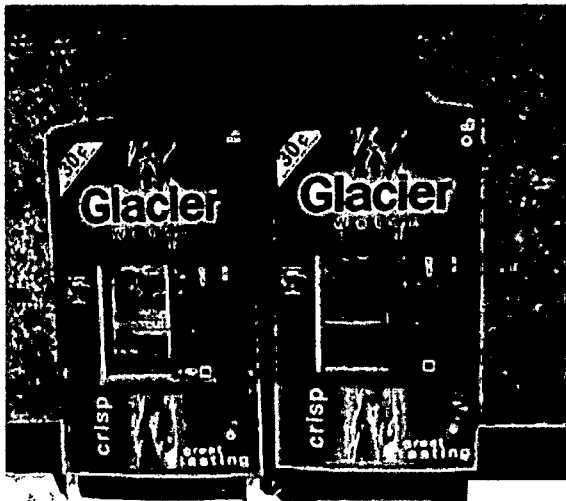
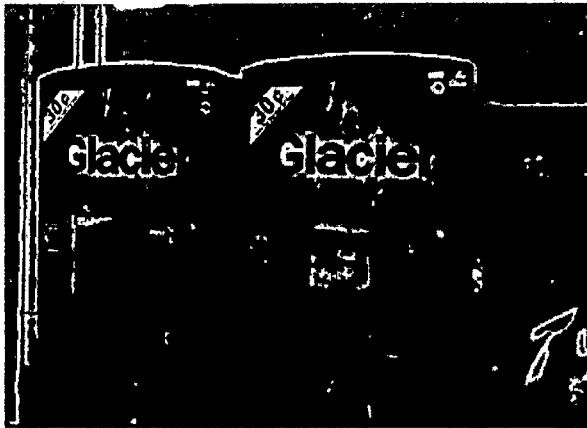
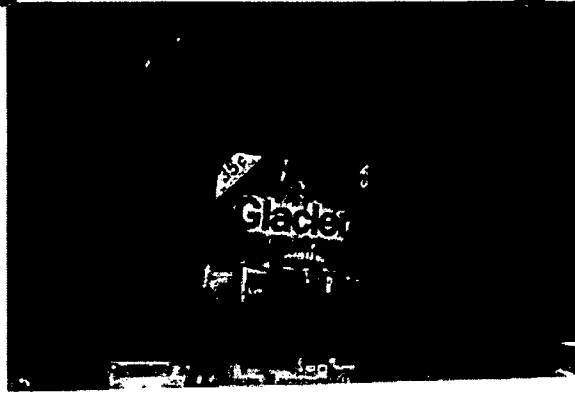
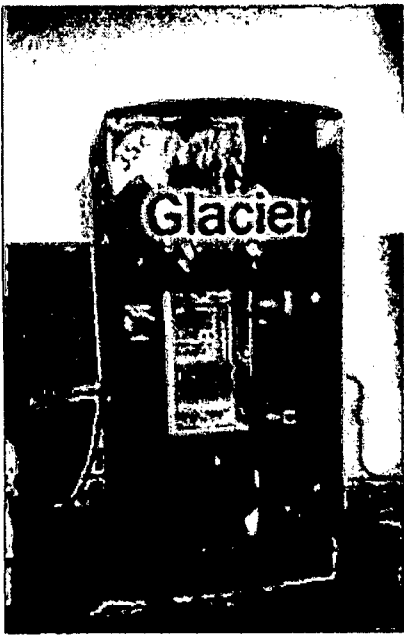
George Goldman  
George Goldman

Victor Merchant  
Victor Merchant

01/02/2014

# **EXHIBIT B**

01/02/2014



2014



# 1 location Bloomington Price Drop 20 Cents to 15 Cents



# 2 location Bloomington Price Drop 20 Cents to 15 Cents



# 3 location Bloomington Price Drop 20 Cents to 15 Cents



# 4 location Bloomington Price Drop 20 Cents to 15 Cents

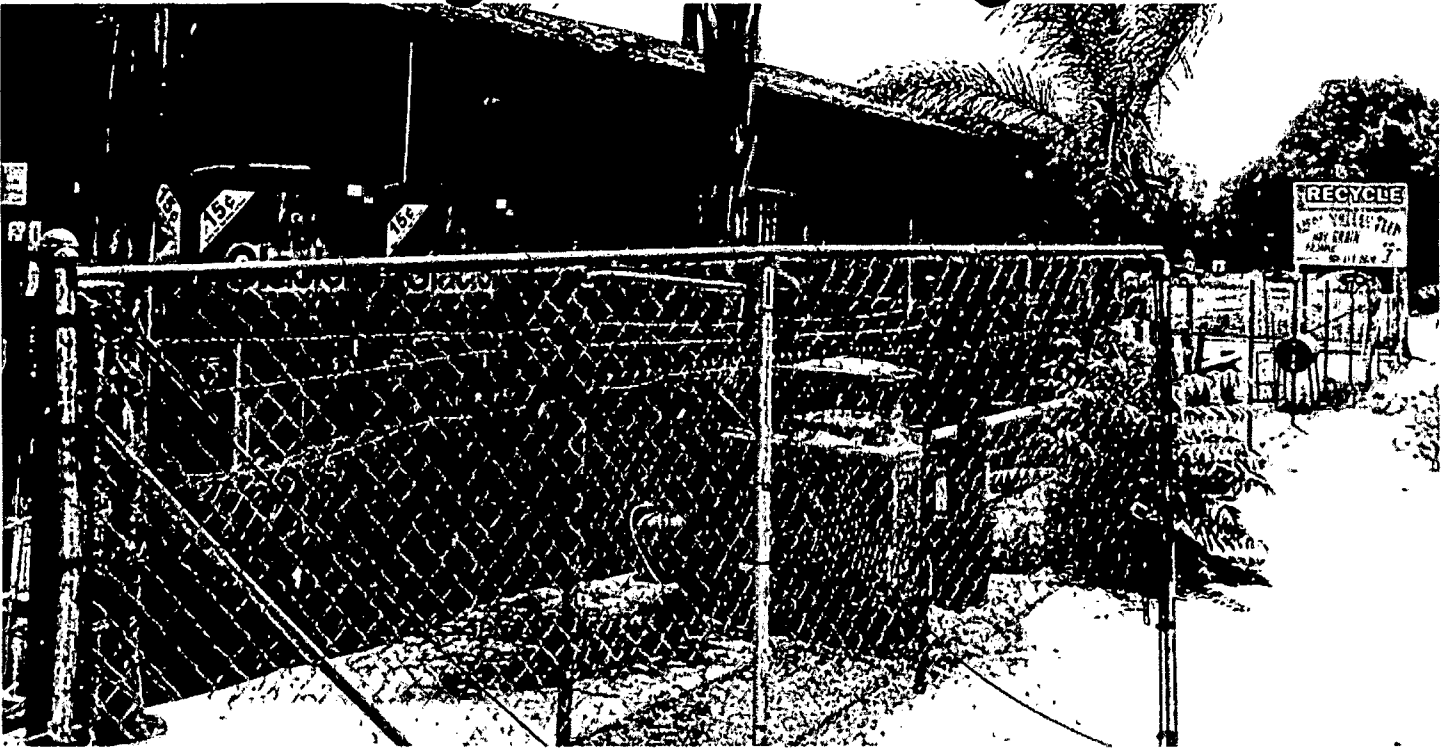
01/02/2014



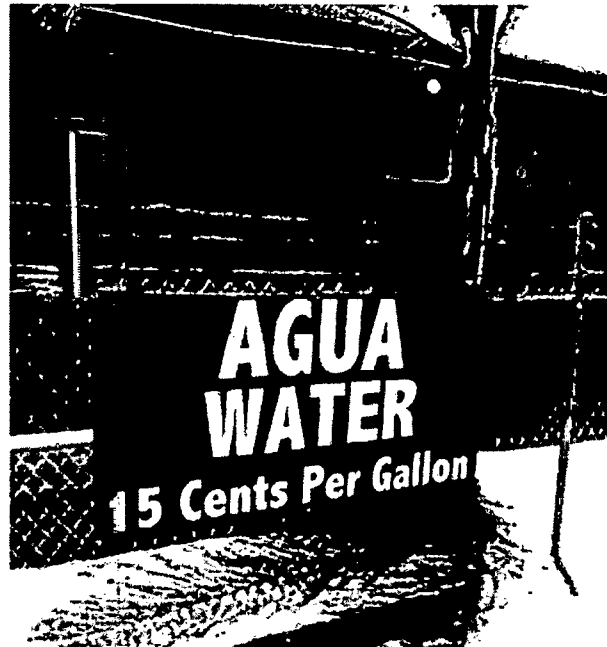
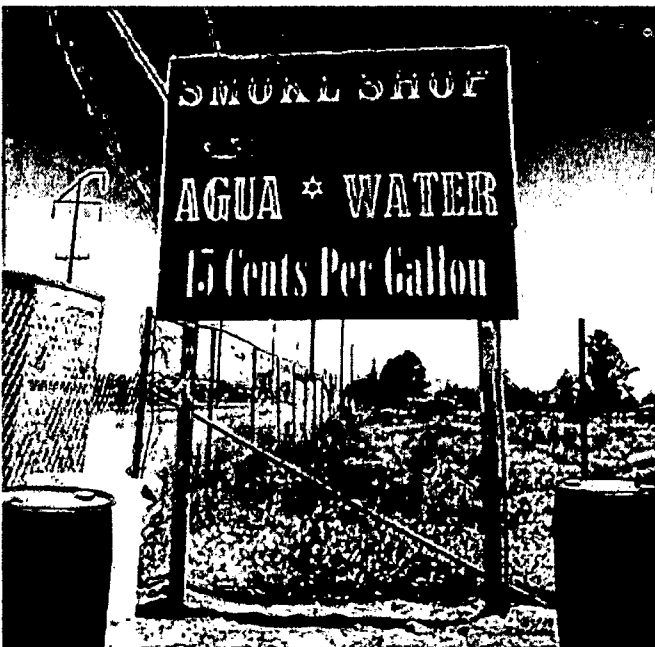
Jim's Liquor – Sun Valley



Jim's Liquor – Sun Valley    Glacier placed machine vending at 25 Cent next to Mountain's Peak vending at 35 Cents



Mead Valley Feed – Perris. Glacier placed machines at 15 cents less than a half a mile from locations they pulled at 25 cents per gallon.



Signs from Mead Valley Feed – Perris

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address):

Edward A. Rose, Jr., Esq. CSB 177878

Two Arena Place

7324 Southwest Freeway Suite 608

Houston, Texas 77074

TELEPHONE NO.: 713-581-6029

FAX NO.: 832-801-0090 (Court of California  
County of Los Angeles)

ATTORNEY FOR (Name):

FOR COURT USE ONLY

FILED

FILED  
NORTH COUNTY DIVISION

2013 SEP 30 PM 3:10

DEC 30 2013

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego

STREET ADDRESS: 325 South Melrose Drive

MAILING ADDRESS:

CITY AND ZIP CODE: Vista, California 92081

BRANCH NAME: North County

Sherri R. Carter, Executive Officer/Clerk

By: Rachel Duran  
DeputyCLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

CASE NAME:

F K B Incorporated v. GW Services, LLC

## CIVIL CASE COVER SHEET

- ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

## Complex Case Designation

- ☐ Counter ☐ Joinder

Filed with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

37-2013-00089349-CU-BC-NC

JUDGE:

DEPT:

IMAGED

BC 531805

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

## Auto Tort

- ☐ Auto (22)  
☐ Uninsured motorist (46)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- ☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)

## Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PI/PD/WD tort (35)

## Employment

- ☐ Wrongful termination (36)  
☐ Other employment (15)

## Contract

- ☒ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (09)  
☐ Insurance coverage (18)  
☐ Other contract (37)

## Real Property

- ☐ Eminent domain/Inverse condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)

## Unlawful Detainer

- ☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)

## Judicial Review

- ☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☐ Writ of mandate (02)  
☐ Other judicial review (39)

Provisionally Complex Civil Litigation  
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☐ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

## Enforcement of Judgment

- ☐ Enforcement of judgment (20)

## Miscellaneous Civil Complaint

- ☐ RICO (27)  
☐ Other complaint (not specified above) (42)

## Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses  
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): Six (6)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case (You may use form CM-015.)

Date: September 27, 2013

Edward A. Rose, Jr. Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.